REMARKS

In the Official Action, Examiner Yu removed the case from Appeal, an Appeal Brief dated February 26, 2004 having been forwarded to the US PTO and received on March 1, 2004 at the US PTO.

More particularly in the Official Action, Examiner Yu noted two additional grounds for rejection, her justification for removing the case from Appeal.

The first ground is that Examiner Yu now cites US Patent No. 5,869,104 to Taylor et al. against claims 1 - 12, 14, and 15 under 35 U.S.C. 102(b), whereas previously, she cited Taylor et al. against these claims under 35 U.S.C. 103(a).

The second ground is that Examiner Yu now cites a new reference, US Patent No. 5,536,499 to Znaiden et al., in support of her previous rejection of claim 13 under 35 U.S.C. 103 (a) in view of Taylor et al., Friedrichs, and Koike et al.

Discussion of citation of US Patent No. 5,869,104 to Taylor et al. under 35 U.S.C. 102(b).

As Examiner Yu should be well aware, for a reference to be a reference under any paragraph of 35 U.S.C. 102, that reference, by itself, must teach each and every element of the claimed invention. This is not achieved by Taylor et al. as this reference relates to a solid block of NaCl being applied gently to the skin in a topical method to treat skin conditions that are infections, for instance, impetigo, and is silent vis-à-vis a method of treating cellulite, which is the subject of the claims of the present invention.

As explained repeatedly to Examiner Yu, cellulite is not an infection. Rather, cellulite is an arrangement of fat (adipose tissue) and retained water, resulting in the cellulite-affected skin having a honeycomb pattern in a given area of the skin that tends to bulge.

Taylor et al. contain nothing whatsoever about cellulite.

Accordingly, Examiner Yu is requested to withdraw the new rejection of claims 1 - 12, 14, and 15 under 35 U.S.C. 102(b) in view of Taylor et al.

Discussion of citation of US Patent No. 5,536,499 to Znaiden et al. under 35 U.S.C. 103(a).

Znaiden et al. have *in vitro* data for treating collagen with inositol phosphate (phytic acid) purchased from Aldrich, to stimulate collagen activity. Also, Znaiden et al. postulate that topical treatment *in vivo* with inositoal phosphate (phytic acid) of human skin having cellulite will reduce or prevent signs of cellulite. Znaiden et al. present no actual data of *in vivo* treatment with inositoal phosphate (phytic acid) of human skin having cellulite.

Accordingly, Znaiden et al. is mere background on treatment of cellulite. The pertinent references have already been presented and exhaustively discussed, and those of the references that relate to cellulite show actual treatment of cellulite-affected skin.

Thus, Examiner Yu is requested to withdraw the new rejection of claim 13 under 35 U.S.C. 103(a) in view of Znaiden et al., Taylor et al., Friedrichs, and Koike et al.

Previous arguments from February 26, 2004 Appeal Brief.

All previous arguments from the Appeal Brief are reincorporated here by reference.

CONCLUSION

In view of the above Remarks, applicant requests the Examiner to withdraw the claim rejections under 35 U.S.C. 102(b) and 35 U.S.C. 103(a). Applicant submits the claims distinguish over the cited references in any combination. Hence, applicant submits the present application is in proper condition for allowance, and requests an official notification of allowance.

DEPOSIT ACCOUNT

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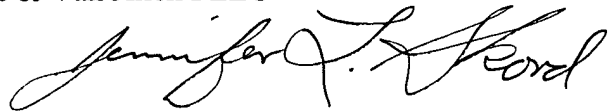
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Respectfully submitted,

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Date: __August 4, 2004__   By: _____

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